

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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|--------------------------|---|---------------------------|
| JENNIFER MARIE WISENER, |) | Case No.: 5:19 CV 2199 |
| |) | |
| Plaintiff |) | JUDGE SOLOMON OLIVER, JR. |
| |) | |
| v. |) | |
| |) | |
| COMMISSIONER OF SOCIAL |) | |
| SECURITY ADMINISTRATION, |) | |
| |) | |
| Defendant |) | <u>ORDER</u> |

The Commissioner of Social Security Administration (“Commissioner”) denied disability benefits to Plaintiff Jennifer Wisener (“Plaintiff” or “Wisener”) in the above-captioned case. Plaintiff then sought judicial review of the Commissioner’s decision, and this court referred the case to Magistrate Judge Kathleen B. Burke (“Magistrate Judge” or “Judge Burke”) for preparation of a Report and Recommendation (“R & R”). Both parties submitted briefs on the merits. (ECF Nos. 13, 16, 17.) Plaintiff requests an order vacating the Commissioner’s decision and remanding the case on the grounds that the Administrative Law Judge (“ALJ”) failed to properly evaluate the evidence, erred when assessing Wisener’s credibility, and erred in concluding that there are jobs in the national economy that Plaintiff can perform. (Pl.’s Br., ECF No. 13.) The Commissioner sought final judgment upholding the decision below. (Def.’s Br., ECF No. 16.)

Judge Burke submitted an R & R (ECF No. 18) on May 14, 2020, recommending that the court vacate the Commissioner’s final decision and remand for further proceedings. First, the

Magistrate Judge found that the ALJ did not give specific reasons for the weight he gave to Wisener's statements regarding her symptoms. (*Id.* at PageID #2386–87.) The R & R explains that “the ALJ’s decision [regarding credibility] does not contain specific and clearly articulated reasons for the weight he gave to Wisener’s symptoms that would permit the [Magistrate Judge] to assess how he evaluated those symptoms.” (*Id.* at PageID #2387.) Second, Judge Burke found that the ALJ did not properly explain why Wisener failed to meet the impairments under Listings 12.04, 12.06, 12.08, 12.11, and 12.15 of 20 C.F.R. § 404, Subpt. P, Appx. 1, Pt. A2. (R & R at PageID #2386–92, ECF No. 18.) The R & R notes that the ALJ did not cite specific evidence and instead made only generalized reference to the record, which left the Magistrate Judge unable to “discern what evidence the ALJ relied on in Step Three” of the framework for evaluating disability claims. (*Id.* at PageID #2389.) In addition to this lack of specificity, the R & R also found that “the ALJ did not accurately summarize the record.” (*Id.*) Consequently, the Magistrate Judge was unable “to determine whether [the ALJ’s] findings are supported by substantial evidence.” (*Id.* at PageID 2388.) The R & R therefore recommends vacating the Commissioner’s final decision and remanding for the ALJ to “reconcile inconsistencies and/or explain why some statements are credited while others are not.” (*Id.* at PageID #2392.)

Objections to the R & R were due by May 28, 2020, but neither party submitted any. Accordingly, this matter is ripe for review.

The court finds, after careful *de novo* review of the R & R and all other relevant documents in the record, that the Magistrate Judge’s conclusions are fully supported by the record and controlling case law. Accordingly, the court adopts as its own Judge Burke’s R & R (ECF No. 18).

The court hereby vacates the Commissioner's decision and remands the case for further proceedings consistent with this opinion.

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

May 29, 2020